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## COURTS IN THE PHILIPPINES, OLD—NEW.

**A**DMINISTRATION of justice, involving the settlement of disputes and the punishment of crime, is and always has been a vital function of government; in fact, it might well be said to be the basis of all orderly government. The experiment in government which was begun by the American people when they separated themselves from the domination of England reached a new stage in its development when Admiral Dewey was victorious in Manila Bay on May 1, 1898. It is perhaps impossible to determine at this time whether this new stage is to result in an attempt at colonization or in the establishment of a new nation. From the point of view of the student of the comparative history of law and institutions, it matters little what the years may produce, it is rather more pertinent to inquire concerning the nature of the acquisition and the developments which have been made.

In a small compass it is impossible fully to discuss the administration of justice in the Philippine Islands, historically and comparatively; it is possible only to give a birdseye view of the development of this institution, approaching the subject in detail only at the more interesting and important stages.

The Philippine Islands were discovered in 1521 by Ferdinand Magellan, a Portuguese navigator in the service of the King of Spain, but they were considered so poor that no attempt was made to take possession until 1564, when Philip II sent Miguel Lopez de Legazpi out in command of an expedition with instructions to occupy and take charge of the Islands. This expedition left Natividad, Mexico, November 21, 1564, and reached the island of Leyte, February 13, 1565, from which island he proceeded to the island of Cebu where he established his headquarters.<sup>1</sup>

An important member of the Legazpi expedition was Father Urdaneta, and his presence typifies the reason for the settlement and development of the Philippines. The purpose of the expedition was primarily a mission and not a colony, its basic foundation being religion rather than commerce. Throughout the history of the Islands, the church has had a dominating influence. It might

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<sup>1</sup> History by T. H. Pardo de Tavera. Vol. 1, Census of the Philippine Islands, (1903), p. 309.

well be said to have been the hegemony of the entire administration of the Spanish government. As one writer expresses it, we must be prepared, in an investigation of the political administration of the Philippines, to find it "a sort of outer garment, under which the living body is ecclesiastical."<sup>2</sup>

The administration of the Philippines which was established under Legazpi was modeled after the government in Spain, with adaptations to the conditions in the Islands. The governor and captain-general was the counterpart of the king.<sup>3</sup> He had wide powers, controlling nearly every branch of the government, either through the power of appointment or through direct control. During his term of office he was supreme. The Islands were subdivided into *provinces* and *pueblos*, which were governed by *alcaldes-mayor*<sup>4</sup> and *gobernadorcillos*<sup>5</sup> respectively.

With very few changes this general system of government was in use down to the occupation by the American government. An examination of the administration of justice before the Spanish occupation will throw some light on the problem that confronted Legazpi, just as a knowledge of the system under the Spanish regime is necessary to the appreciation of the work done since the American occupation in 1898.

#### THE ADMINISTRATION OF JUSTICE BEFORE THE SPANISH OCCUPATION

The documentary evidence of the administration of justice in the Philippine Islands before Spanish occupation is limited to the writings of the early Spanish travelers, usually priests and missionaries, who tell of conditions as they existed at the time of the occupation of the Islands by the Spaniards and shortly thereafter. Whether these narrations are faithful expositions of first-hand experience or whether they are based on hearsay, is a matter of conjecture.

Among the earliest writers who discuss the customs of the primitive Filipino is Juan de Plasencia, a Franciscan friar. In a document dated October 21, 1589, entitled "The Customs of the

<sup>2</sup> Historical Introduction to Blair and Robertson, *The Philippine Islands*, Vol. 1, p. 49, by Edward Gaylord Bourne.

<sup>3</sup> He was in effect a viceroy. See case of *Jover v. Insular Government*, 10 Phil. Rep. 522, 534-538; same case on appeal, *Jover v. Insular Government*, 221 U. S. 623 at page 632, where Justice Van Devanter says: "The Governor General within the territory committed to his charge possessed all the powers of his master, the King, save where it was otherwise provided."

<sup>4</sup> Governor.

<sup>5</sup> Literally "little governor."

Tagalogs"<sup>6</sup> he says that this group lived in villages or *barangays*,<sup>7</sup> which were presided over by chiefs or *datos*, who exercised both administrative and judicial functions. Their method of trial, according to Plasencia, was well established. "Investigations made and sentences passed by the *dato* must take place in the presence of those of his *barangay*. If any of the litigants felt himself aggrieved, an arbiter was unanimously named from another village or *barangay*, whether he was a *dato* or not; since they had for this purpose some persons known as fair and just men, who were to give true judgment according to their customs." \* \* \* "They had laws by which they condemned to death a man of low birth who insulted the daughter or wife of a chief. They condemned no one to slavery, unless he merited the death penalty. All other offenses were punished by fines in gold, which if not paid with promptness, exposed the culprit to serve, until the payment should be made, the person aggrieved, to whom the money should be paid."<sup>8</sup>

Father Francisco Colin, a Jesuit friar, published a book entitled "Labor Evangelica," which is a narrative of the Jesuit missions in China, Japan and the Philippines. This book was published in Madrid in 1663. Under the head of "Native Races and Their Customs," he discusses at some length the procedure of trial among the early Filipinos and indicates that the trial by ordeal held an important place in the determination of guilt. The laws administered, he says, "were in the nature of traditions, handed down from generation to generation."

"Their laws and policy, which were not very barbarous for barbarians, consisted wholly of traditions and customs, observed with so great exactness that it was not considered possible to break them in any circumstance." \* \* \* "For the determination of their suits, both civil and criminal, there was no other judge than the said chief, with the assistance of some old men of the same *barangay*. With them the suit was determined in the following form. They had the opponents summoned and endeavored to have them come to an agreement. But if they would not agree, then an oath was administered to each one, to the effect that they would abide by what was administered and done. Then they called for witnesses and examined them summarily. If the proof was equal (on both sides) the difference was split; but if it were unequal, the sen-

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<sup>6</sup> The Tagalogs constituted the principal tribe of the Filipinos.

<sup>7</sup> The name "*barangay*" is the exact word used in the early Malay to describe a small boat or banca. It is presumed that these villages were formed by the owners of boats, which brought these immigrants to the Islands.

<sup>8</sup> VII Blair and Robertson, *op cit.*, p. 179.

tence was given in favor of the one who conquered." \* \* \* "In a matter of theft, if the crime were proved, but not the criminal, and more than one person was suspected, a canonical clearance of guilt had to be made in the following form. First they obliged each person to put in a heap, a bundle of cloth, leaves, or anything else they wished. If the article stolen was found in the heap \* \* \* then the suit ceased; if not, one of three methods was tried. First they were placed in the part of the river where it was deepest, each one with his wooden spear in his hand. Then at the same time they were all plunged under the water, for all are equal in this, and he who came up first was regarded as the criminal. \* \* \* The second was to place a stone in a vessel of boiling water, and to order them to take it out. He who refused to put his hand into the water paid the penalty for the theft. \* \* \* Thirdly, each one was given a wax candle of the same wick, and of equal size and weight. The candles were lighted at the same time, and he whose candle went out first was the culprit." <sup>9</sup>

Father Francisco Combes, a Jesuit friar, traveled among the Moros<sup>10</sup> (a people inhabiting the southern islands of the archipelago), whose customs differed only slightly from the other Filipino tribes. His account appears in a document entitled "*Historia de las islas de Mindanao, Jolo, y sus adjacentes*," published in Madrid in 1667: "Judges in suits or causes follow the simple laws of nature and have no embarrassment of laws and doubts and contrary interpretations. They have no delays by report or prolixity of writs, for they do not waste a single *dedo*<sup>11</sup> of paper in that. The accusation, the plea and the evidence are quickly heard—all in the manner of the time of Noah. If there is no testimony, they admit the parties to the oath, which contains terrifying imprecations. With that plea the party is usually content; \* \* \* if, perchance, the party is satisfied that he has truth on his side, at his petition they do not rest content with that trial, but judgment of hot coals or hot iron \* \* \* if the persons are burned, then their punishment is proceeded with; and if not, the accuser is obliged to make requital."<sup>12</sup>

Juan Francisco de San Antonio, a Franciscan friar, in his "*Cronicas*," published in Manila in 1738, tells of other methods used to determine the guilty party: "In order to discover any theft, they

<sup>9</sup> Blair and Robertson "*The Philippine Islands*," Vol. XL, p. 84.

<sup>10</sup> The Moro is a Mohammedan by religion and was never completely conquered by the Spaniards. He was always a source of worry to the government because of his piratical tendencies.

<sup>11</sup> The *dedo* is a measure equivalent to one forty-eighth of the vara or Spanish yard.

<sup>12</sup> Blair and Robertson, "*The Philippine Islands*," Vol. XL, p. 99.

generally burn fresh rock-alum, and after it has evaporized and then crystallized, they say that the figure that these crystals form is the living picture of So and So, and that he is the author of the theft. \* \* \* they all agree to that statement, though the face should be that of a dog; and they make a charge in court against So and So and impute the theft to him. Sometimes they take a screen or sieve (which they call '*biláo*'), in which they fasten some scissors in the form of a cross, to which a rosary is hung. Then they proceed to call the name of each one who is present at the exercise. If the *biláo* shakes when the name of Pedro is called, then that poor Pedro is the robber and pays for the theft. \* \* \* Sometimes they light a candle \* \* \* ; they believe that if the flames should flare up in the direction of any of those present at this act, he is thus shown to be the robber."<sup>13</sup>

Joaquin Martinez de Zuñiga, an Augustinian friar, in his "Historia de las Islas Filipinas" published in Manila in 1803, tells us that nearly all disputes and crimes were settled on a gold basis, except murder, which required retaliation. If the murder was committed by the member of another village or *barangay*, it resulted often times in a tribal war.

It is a rather curious fact that to some extent these same methods of trial and general administration of justice are still in use in some parts of the Islands. The wilder tribes, living in the mountains, over whom a strong government has never been established, still make use of these crude customs. Former Governors Pack and Dinwiddie of Benguet Province and Lepanto-Bontoc Province, in a joint report to the Census Board in 1903, said: "Every Igorot town<sup>14</sup> has its own court or what might be called a board of arbitration, composed of the old men of the village, before whom anyone can make a complaint and secure a hearing. This board deals with all classes of cases, from the pettiest of domestic troubles to crimes of serious nature, and the decision of the old men is supposed to be final, though it is rapidly becoming the custom of the more western people to appeal from these decisions to the governor, or an American justice of the peace, when not satisfied. When a dispute arises or a theft is committed among the families belonging to a tribunal, the old men of that particular tribunal settle the trouble, determining the guilt, fixing the penalties for the theft, proper division of property, etc., that is, provided the questions are not of general importance to the town or do not affect

<sup>13</sup> Blair and Robertson, Vol. XL, p. 343.

<sup>14</sup> The Igorot tribes are found principally in North-Central Luzon, in the provinces of Abra, Benguet, Lepanto-Bontoc and Nueva Viscaya.

people belonging to other tribunals, in which case a selected few of the old men from the tribunals involved come together and make decisions, or, when the question is still broader and the entire town is involved, or a dispute arises between different towns, the representatives of all the tribunals have a session." \* \* \*

"The old men or judges not only arbitrate, take evidence, and fix penalties, but they also determine the guilt of suspected parties by recourse to certain ceremonies. The principal ones are: First, the "*podung*" or bloody ceremony, where the suspected and the accuser (the property owner in the case of theft), under the direction and supervision of five judges, have holes dug simultaneously in their scalps, and the one who bleeds the most is declared guilty. The suspected puts up the entire amount of money which the stolen property is said to be worth, the accuser one-half of this sum, and the winner, be he accuser or accused, takes the money; second, when some one among a number of persons is suspected, it is customary to give each a handful of dry rice to chew, which is spat into the hands of the judges, and the mixture showing the least saliva is adjudged to disclose the guilty one as 'a guilty man has a dry mouth'; and finally, the suspects may be made to thrust their hands into boiling water, and a refusal to do so, or any complaint at the time or afterwards, determines guilt."<sup>15</sup>

Lieut. G. S. Turner of the Tenth United States Infantry, in a report in 1903 on the Tirurayes of Cottabato stated that these wild people have a patriarchal form of government in which the chief or "*cafaduan*" exercised judicial functions. "Regular fines of a certain number of spears, drums, ornaments, etc., are recognized for the various crimes. These fines are imposed by the '*cafaduan*' who is, however, assisted in judging the cases of the village by the old men."

#### THE ADMINISTRATION OF JUSTICE UNDER SPANISH RULE, 1521-1898

##### *Appellate Courts*

The system of courts and the administration of justice established by the Spanish government seems to have been superimposed upon the native customs rather than substituted for them. The old chiefs of tribal groups were continued under the title of "*cabeza de barangay*," and, although it does not appear exactly what their duties were, they seem to have exercised their functions in much the same way as before. The courts were, at first, primarily for the Spanish colonists.

<sup>15</sup> Vol. I, Census of the Philippine Islands, p. 534.

The first provision for the administration of justice was in a royal decree of August 14, 1569, confirming the appointment of Miguel Lopez di Legazpi as the first governor and captain-general of the Philippines. Said decree provided that:—"You are also empowered to administer our civil and criminal justice, in company with the officers of justice who may be appointed in said island and settlement. And you may hear, examine, and decide any civil or criminal suit or case that may arise in the said island, or in its towns, which you may have founded or shall found, and in those settlements which shall be made in the future, either among our colonists or among others who are natives of the island, now or in the future."

The next provision was in a royal decree of May 5, 1583, which in elaborate terms established a royal *audiencia* or Supreme Court<sup>16</sup>, which in addition to being a court of justice, also acted as an advisory council to the governor, who was ex officio its president.

The district over which the court had authority was decreed to be "the said Island of Luzon and the other Philippine Islands of the archipelago of China, and the mainland of the same, whether discovered or yet to be discovered." Its jurisdiction was over all civil and criminal cases appealed from "the governors, *alcaldes-mayor*, and other magistrates of the provinces and islands," and had original jurisdiction to try cases arising within five leagues of the place where the court happened to be sitting. The procedure was the same as the two similar courts in Spain: the *Audiencias* of Valladolid and Granada; and it was ordered "to render decisions according to the precedents of the *alcaldes* of our *audiencias* of Valladolid and Granada."

The decision of the *Audiencia* was to be final "except when the case involves so large amount that there may be ground for a further appeal to our royal person."

This early *Audiencia* was short-lived, however, due to the friction which arose between it and the governor-general, which was augmented by the Church. As a result the *Audiencia* was abolished by the royal *cedula* of August 9, 1589, and the administration of justice was again merged in the governor-general, Gomez Perez Dasmarias, who was appointed at that time. The *Audiencia* was again re-established, due to the efforts of Bishop Salazar, by the royal decree of May 25, 1596, but it did not resume its functions until the arrival of the royal seal on May 8, 1598. As re-estab-

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<sup>16</sup> The bill providing for the personnel of the Supreme Court of the United States became a law Sept. 24, 1789. The first Justice was appointed Sept. 24, 1789. The first session was held Feb. 4, 1790, over two hundred years after the establishment of the *Audiencia* in the Philippines.



lished the *Audiencia* consisted of the President (the governor general), four associate justices, a prosecuting attorney (*fiscal*), with assistants, a reporter, clerk, and other minor officials. Besides being a court of appeal it exercised governing and legislative functions. The records of some of its ordinances cover a wide range of subjects.<sup>17</sup> It passed rules governing the Chinese, notaries, prison wardens, hucksters, the breeding of fowl, collection of taxes, imports, slavery and many others—in fact very little of importance was beyond their supervision, and it is reported that their advice and consent were sought in all public measures. The decree itself states that “in matters and cases of importance which may arise relating to government, the president-governor is to act thereon together with the *oidores*, in order that the latter may express their opinions in an advisory capacity, and after having heard them he shall take such steps as may be most suitable to God and ourselves and conducive to peace and tranquillity of the province.”

The *Audiencia* as an advisory body acted under the name of “*real acuerdo*.”<sup>18</sup>

Apparently there was no change in the *Audiencia* until the royal decree of March 11, 1776, which ordered the court to consist of one president, one regent (the immediate head of the court), and five *oidores* or associate justices. There were minor changes of this sort from time to time—for instance, by the royal decree of January 30, 1855, the number of associate justices was increased to seven, two of whom were judge advocates, one of the army and one of the navy.

By the royal decree of July 4, 1861, the governor-general ceased to be the president of the *Audiencia* and the “*real acuerdo*” was abolished, its functions being taken over by the council of administration, which had been established by the royal decree of June 4, 1861.

For judicial purposes the *Audiencia* divided itself into two branches, one civil and the other criminal. By the royal decree of May 23, 1879, the names of the two branches were changed to the “*sala de lo civil*” and “*sala de lo criminal*,” with a presiding judge for each chamber.

By the royal decree of May 29, 1885, the personnel was changed as follows:—One president of the *Audiencia*, a president and four justices of the civil branch, and a president and four justices of the criminal branch. The *Audiencia* as a whole exercised adminis-

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<sup>17</sup> Vol. X, Blair and Robertson, p. 293.

<sup>18</sup> Literally, royal resolution.

trative supervision and control over the judiciary and internal economy of the department of justice.

By the royal decree of February 26, 1886, the territorial *Audiencia* of Cebu was established. Its jurisdiction extended over the islands of Cebú, Negros, Panay, Samar, Paragua, Calamianes, Masbate, Tacao, Leyte, Jolo and Balabac, and the smaller adjacent islands.

By the royal decree of May 19, 1893, the territorial jurisdiction of the *Audiencia* of Manila was continued, while the *Audiencia* of Cebú became an *Audiencia* for criminal cases only. At the same time a criminal *audiencia* was established at Vigan having the same organization as the court at Cebú—one president and two associate justices.

#### *Lower Courts*<sup>19</sup>

The lower courts, which most vitally affected the people, were apparently unprovided for in detail. The Governor-General of the Islands was, in general terms, given the power to administer justice and was given the power of appointment and removal over the officials of the Islands. In the King's instructions to Gomez Perez Dasmarinas of August 9, 1589, he said: "I think it advisable that the offices of the *Corregidor*,<sup>20</sup> and *alguazil*<sup>21</sup> and others which you assign in the said islands, shall be declared vacant and removed whenever you consider that my service and the execution of justice demand it. You are empowered to substitute others in their places; and to hear, dismiss, and decide all the criminal and civil trials and suits which may arise in the said islands and towns. \* \* \* You, your lieutenants, and other magistrates shall enforce, and cause to be enforced, all fines and punishments which you may inflict, which monies are to be given and delivered to the officials of my exchequer."

As the conquest and pacification of the islands proceeded, Legazpi, the first governor, and his successors granted *encomiendas*<sup>22</sup> to Spanish soldiers and favorites who as *encomenderos* exercised all the functions of governors, civil administrators and judges.

Gradually the Islands were divided into districts called *provinces*, and these provinces were subdivided into *pueblos*. Each *province*

<sup>19</sup> Nisi prius courts.

<sup>20</sup> Mayor of a town.

<sup>21</sup> Sheriff.

<sup>22</sup> The *encomienda* consisted of a portion of a land of a greater or less extent, granted as a reward for services. Each resident of an *encomienda* paid a certain tribute to the *encomendero* and in return he was to receive protection and justice. It was a species of feudal government adapted to the conditions.

was governed by an *alcalde-mayor*, usually a Spaniard, who exercised the functions of governor, treasurer, judge, and sheriff; the *pueblo* was in turn governed by a *gobernadorcillo*, or "little governor," who was usually elected from the *cabezas de barangay*. The *gobernadorcillo* had jurisdiction over minor matters, while the *alcalde-mayor* had jurisdiction of all civil and criminal matters arising in his province.

The fact that the office of *alcalde-mayor* was frequently used as patronage for the governor resulted oftentimes, as some have charged, in these offices being filled by incompetents. The joining of the executive and judicial functions in one man led to abuses.<sup>23</sup>

The judicial and executive functions remained in the *alcaldes-mayor* until 1870, though there were some minor changes made before that time. By royal decree of December 11, 1830, the provinces were classified with regard to the sort of government which obtained in them—government by *alcalde-mayor*, who was a civilian, and government by politico-military governors, who were military officers. September 23, 1844, a decree was issued dividing the office of *alcalde* into three branches—entrance, promotion, and final—and each branch required a service of three years.<sup>24</sup> The royal decree of January 27, 1854, reorganizing the *alcaldes-mayor*, reduced the branches to entrance and final and ordered that "the offices of *alcaldes-mayor* shall be given to judges who are lawyers and who shall have served as lieutenant-governors in said islands." The royal decree of June 30, 1860, made a start toward the separation of the judicial from the executive branch. Additional *alcaldes* were provided, whose functions were to be entirely judicial. It was not until October 25, 1870, however, that the complete separation was accomplished. By the royal decree of that date, the provinces were divided for judicial purposes into *distritos*,<sup>25</sup> *partidos*,<sup>26</sup> and *terminos municipales*.<sup>27</sup> Each district was given an *audiencia*, each judicial district was given a Court of First Instance, and each municipal district a justice of the peace. The entire archipelago constituted one district with one *audiencia*, while each province was usually a judicial district. The Courts of First In-

<sup>23</sup> Tomas de Comyn, *State of the Philippine Islands*, (London, 1821), p. 194; Sinbaldo de Mas, *Informe de las Islas Filipinas, Administracion de Justicia*, (1842), Vol. II, No. 12; T. H. Pardo de Tavera, *History*, Vol. I, p. 366, *Census of the Philippine Islands* (1903); Chief Justice Arellano and Justice F. Torres, *The Judiciary*, Vol. I, p. 389, p. 407, *Census of the Philippine Islands* (1903).

<sup>24</sup> A sort of civil service.

<sup>25</sup> Districts.

<sup>26</sup> Judicial districts.

<sup>27</sup> Municipal districts.

stance took cognizance of all civil and criminal cases arising within their territory, rendering judgment in all civil cases which involved 200 pesos or more (except cases which were especially under the jurisdiction of the ecclesiastical or special courts, or the *audiencia*).

### *Justices of the Peace or Municipal Courts*

The first provision for minor disputes in the villages was before the "*cabezas de barangay*." Later the *gobernadorcillo* assumed jurisdiction over his *pueblo*. The order of the *Audiencia* of August 31, 1860, limited their jurisdiction in civil suits to cases involving 44 pesos or less, and to minor offenses which did not involve more than ten days' confinement or a fine of 5 pesos.

By the royal decree of October 25, 1870, a division was made, making provision for a justice of the peace, but as a matter of fact, this office was still, in many localities, in the hands of the *gobernadorcillo*. By the royal order of May 29, 1885—confirmed by the order of January 24, 1887—it was provided that each municipality should have a justice of the peace, appointed by the governor on recommendation of the president of the *Audiencia*. Only persons who were lawyers, or who had some academic or professional title, or those "whose position and circumstances" warranted it, were eligible for the appointment. In cases where such a person could not be found, the *gobernadorcillo* was to continue to act. The jurisdiction and powers of the justice of the peace were determined by the laws of civil and criminal procedure in force. Cases in which the claim did not exceed 200 pesos, administration proceedings (heirship), preliminary orders in *pueblos* where no Court of First Instance held sessions, and proceedings for conciliation and various other civil matters were within the authority of this office. They also took cognizance of offences in first instance and conducted preliminary proceedings in criminal matters.<sup>28</sup>

### *Special Courts*

The courts of ordinary jurisdiction were limited in their jurisdiction by special courts having special jurisdiction over particular questions. Among these were the ecclesiastical court, the army and navy court, the treasury court, the commercial court, and the contentious court. The ecclesiastical court had jurisdiction over all complaints, civil and criminal, brought against the clergy; of marriage and divorce; and of violations of the canon law. The army and navy court was a similar court having jurisdiction of all

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<sup>28</sup> Performed the functions of a grand jury.

civil and criminal cases affecting soldiers or persons having the privileges belonging to these classes.<sup>29</sup> Appeal in civil cases to the *Audiencia* was permitted. The treasury court had jurisdiction over legal cases affecting the treasury, including contraband and smuggling. The commercial court was established in Manila by the royal decree of July 26, 1832, and had jurisdiction over all transactions, contracts, and agreements growing out of the commerce of the Islands.

By the royal decree of June 4, 1861, a council of administration was created which was composed of the heads of the different branches of the government, the Church, and the army, and which acted as an advisory council to the governor-general. At the same time there was created the contentious court, composed of the president and two judges of the *Audiencia* and two administrative judges appointed by the crown. Complaints were made against the administration to this court with a provision for a final appeal to the council of state in Spain. This court existed until January 1, 1890, when it was transferred to the council of administration, where it was known as the "*secretaria del tribunal contencioso y consejo de administracion*."

By the decree of February 1, 1869 ("decree of unity of privileges") it was declared that the ordinary jurisdiction alone was competent to take cognizance of civil and criminal matters and offences committed by the ecclesiastics; of civil and criminal matters affecting the privileged classes of the army and navy; of civil and criminal affairs of foreigners, both domiciled and transient; of treasury matters and the crimes of smuggling, fraud, and similar offences; and also of mercantile affairs. Hence the treasury court and the court of commerce were done away with, and as regards the ecclesiastical court and the naval and military court, their authority disappeared with regard to the personal privileges of the classes over whom their jurisdiction extended, excepting as to canonical matters which were retained by the first, and as to crimes of a certain nature, which were retained by the second. The commencement of probate proceedings and intestate proceedings in the estates of soldiers and sailors dying in battle or at sea was allowed to the military and naval authorities, but these proceedings could only be completed before the civil courts.

These were the tribunals of justice in the Philippine Islands up to the time of the American occupation. The judges were, as a

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<sup>29</sup> Retired officers, and wives, children and servants of officers.

rule, Spaniards, and the entire judicial system, including the codes of civil and criminal procedure, followed closely the forms observed in Spain.<sup>30</sup>

#### THE PERIOD OF MILITARY OCCUPATION

These were the institutions which the American government found and upon which the new structure was to be built. To all intents and purposes they were in actual working order up until the surrender of the city of Manila (August 13, 1898). As a matter of fact, however, the Spaniards were not in control of certain parts of the Islands, having surrendered them to the Filipino Revolutionary Army.

The period of military occupation was merely a transition period and the courts established at that time were temporary means to tide over until peace could be secured. The Proclamation of August 14, 1898, issued by Major-General Wesley Merritt, discontinued the courts as they then existed and substituted instead military courts. Article 3 is as follows: "The government established among you by the United States Army is a government of military occupation; and for the present it is ordered that the municipal laws such as affect private rights of persons and property, regulate local institutions, and provide for the punishment of crime, shall be considered as continuing in force, so far as compatible with the purposes of military government, and that they be administered through the ordinary tribunals substantially as before occupation; but by officials appointed by the government of occupation."

General Orders No. 8 of August 22, 1898, as amended by General Orders No. 8 of October 7, 1898, provided that the courts which were substituted for the old courts should exercise only civil jurisdiction, the criminal jurisdiction being entirely in the hands of the Military Commissions, Provost Courts and Courts Martial.

The Provost Court was given, by General Orders No. 8 of August 22, 1898, jurisdiction of criminal cases which involved punishment not to exceed 6 months' imprisonment or \$250.00 fine. This jurisdiction was increased by General Orders No. 18 of September 24, 1898, to one year's imprisonment or \$1000.00 fine, and was still further increased by General Orders No. 46, of October 5, 1899, to two years' imprisonment or \$5000.00 fine.

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<sup>30</sup> The judges of the lower court were frequently appointed by reason of friendship or political favor rather than ability, and they were almost universally very poorly paid. The procedure allowed many needless delays. The natural result was a frequent miscarriage of justice and some corruption. This contributed to a large extent towards the uprising against Spain. No nation, ruling over another people, can long hold their respect when a judicial system is permitted which denies the full protection of the laws to the poor and defenseless. (See footnote 23 *supra*.)

By General Orders No. 20 of May 29, 1899, the Supreme Court of the Philippine Islands was re-established in the following terms: "II. The Supreme Court of the Philippine Islands (*Audiencia Territorial*) heretofore administered in the City of Manila, the exercise of whose jurisdiction has been suspended as to criminal affairs since August 13, 1898, and as to civil affairs since January 30, 1899, is hereby re-established and will exercise the jurisdiction, civil and criminal, which it possessed prior to August 13, 1898, in so far as compatible with the supremacy of the United States in said Islands, and will administer the laws recognized as continuing in force by proclamation from these headquarters dated August 14, 1898, except in so far as they have been or may hereafter be modified by authority of the United States."<sup>31</sup>

General Orders No. 21 of June 5, 1899, re-established the Courts of First Instance and Justice of the Peace Courts for the City of Manila and invested them with the same civil and criminal jurisdiction as they had prior to August 13, 1898.

General Orders 22 of June 17, 1899, declared these courts to be "open and in the exercise of their jurisdiction, civil and criminal, after Wednesday, June 21, 1899." The jurisdiction in criminal matters did not extend to crimes which were prejudicial to military administration and discipline; the Military Governor being the judge of what crimes came under this category.

From time to time as the process of pacification progressed, Provost Courts were established at different points in the Islands with the civil jurisdiction of the Courts of First Instance. For example, by General Orders No. 23, of June 24, 1899, such courts were placed at Iloilo and Cebú. By General Orders No. 29 of July 19, 1899, the office of "*Procurador*" was abolished and provision was made for the licensing of attorneys.

General Orders No. 58 of April 23, 1900, was the most important measure provided for by the Military Government. It contained the Code of Criminal Procedure in 110 short sections and this Code is still in force in the Islands.<sup>32</sup> It has proved to be a speedy system and a just set of rules for the trial of persons charged with crime.

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<sup>31</sup> The three Filipino members of the present court held the following offices on this first court: Chief Justice Cayetano Arellano was made President of the entire court; Justice Manuel Araullo was made President of the Civil Branch; and Justice Florentino Torres was made Attorney (Fiscal) for both branches.

<sup>32</sup> The old Code of Criminal Procedure contained 998 sections and contained no provision similar to our writ of habeas corpus. A man might be arrested and detained indefinitely without trial.

## CIVIL GOVERNMENT

The problem which was presented when the Philippine Islands were actually transferred to the American people by the Treaty of Paris, December 10, 1898, was enormous. It had innumerable phases, each of which had to be met and dealt with. A government had to be established which would answer both the requirements of the Filipino people and the duty of the United States to the world.

January 20, 1899, President McKinley appointed the first Philippine Commission, commonly known as the Schurman Commission, with instructions to investigate and report on the conditions in the Islands, with special reference to the most adaptable form of government. This Commission was composed of Jacob G. Schurman, as chairman, Major-General Elwell S. Otis, Rear-Admiral George Dewey, Colonel Charles Denby, and Prof. Dean C. Worcester. This Commission arrived in Manila, March 4, 1899, and after a thorough investigation made its report to the President and was disbanded.

The Second Philippine Commission, popularly known as the Taft Commission, was appointed March 16, 1900, for the purpose of organizing and establishing a civil government. This Commission was composed of Wm. H. Taft, Dean C. Worcester, Luke E. Wright, Henry C. Ide and Bernard Moses. The instructions which were given to these men by President McKinley, dated April 7, 1900, provided, among other things, that the legislative power of the Islands was to be transferred on September 1, 1900, from the military governor to the Commission. Among the enumerated subjects for legislation was "the organization and establishment of courts." This Commission arrived in Manila on June 3, 1900, and immediately began work. The task of drawing the laws which were to establish courts and a code of procedure was allotted to Commissioner Henry C. Ide. A preliminary draft of the laws was made and published in pamphlet form for the purpose of receiving public criticism. With a few slight changes from the original draft, the law creating the courts was passed June 11, 1901, and was known as Act 136 of the United States Philippine Commission.

Section 2 of this Act provided that "The judicial power of the Government of the Philippine Islands shall be vested in a Supreme Court, Courts of First Instance, and Courts of Justices of the Peace, together with such special jurisdictions of municipal courts, and other special tribunals, as now are or hereafter may be author-



ized by law. The two courts first named shall be courts of record."

The Supreme Court consisted of a Chief Justice and six Associate Justices, any five of whom could convene and form a quorum, but the concurrence of four members was necessary to render a valid judgment. The Justices were by this Act to be appointed by the Commission. The original jurisdiction, as granted by § 17, was the power to issue writs of mandamus, certiorari, prohibition, habeas corpus and quo warranto, and the power to issue "all other auxiliary writs and processes necessary to the complete exercise of its original or appellate jurisdiction."<sup>33</sup> The appellate jurisdiction extended to all actions and special proceedings brought to it from Courts of First Instance. The necessary subordinate officials were provided for, including a clerk and a reporter, and provision was made for the publication of the decisions.

Sections 40, 41, and 42 provided for an attorney-general, a solicitor-general, and an assistant attorney-general, whose duties were substantially the same as similar officers in the United States.

A Court of First Instance was provided for each province, two courts of concurrent jurisdiction being established in the City of Manila.<sup>34</sup>

These courts had original civil jurisdiction; (1) in all civil cases in which the subject of litigation was not capable of pecuniary estimation; (2) in civil actions which involved the title to or possession of real property or any interest therein, or the legality of any tax; but not forcible entry and detainer of lands and buildings, jurisdiction over which rested with the justices of the peace; (3) all cases in which the demand, without interest or the value of the property, amounted to \$100.00 or more; (4) all actions in maritime and admiralty; and (5) all matters of probate, both testate and intestate, guardians, trustees, and receivers, and all cases for the annulment of marriage. Jurisdiction was granted to issue writs of injunction, mandamus, certiorari, prohibition, quo warranto, and habeas corpus in their respective provinces and the power to punish contempt of court by fine or imprisonment. Jurisdiction in criminal cases extended to all cases in which the penalty was more than six months' imprisonment or a fine of more than \$100.00.<sup>35</sup>

The Courts of First Instance were given appellate jurisdiction over all causes arising in justice of the peace courts and other inferior courts in their respective provinces, and it was provided that

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<sup>33</sup> It is notable that the Supreme Court is not given original jurisdiction to issue writs of injunction.

<sup>34</sup> Act 136, § 48.

<sup>35</sup> Act 136, § 56.

such cases were to be tried *de novo*. Each province was provided with a clerk of court and provincial *fiscal* (prosecuting attorney.)<sup>36</sup>

Courts of justice of peace were established in every organized municipality in the Islands, and jurisdiction was granted in civil cases properly triable within the municipality and over which jurisdiction had not been given to the Court of First Instance, in all cases in which the demand, exclusive of interest, amounted to less than \$300.00, and over actions for forcible entry and detainer of real estate, irrespective of the amount in controversy. Jurisdiction in criminal cases was granted in all cases where the sentence by law did not exceed six months' imprisonment or a fine of \$100.00. Two justices of the peace were placed in the City of Manila, but they were divested of their criminal jurisdiction on July 31, 1901, by Act 183, which incorporated the City of Manila and established two municipal courts to try criminal matters only.<sup>37</sup>

The Act of Congress of July 1, 1902, "The Philippine Bill," fixed the status of institutions in the Philippine Islands, contained a bill of rights, and was in effect the first "Constitution" for the Philippines under American occupation.

Section 9 of this Act provided that the Supreme Court and Courts of First Instance should possess and exercise the jurisdiction they then had and "such additional jurisdiction as shall hereafter be prescribed by the Government of said Islands." This passage has been construed to mean that the legislative department might add to the jurisdiction of the Supreme Court and Courts of First Instance, but could not diminish it.<sup>38</sup> This same section also provided that the admiralty jurisdiction of the Supreme Court and Courts of First Instance should not be changed, except by Act of Congress. The power to appoint the Justices of the Supreme Court was transferred from the Commission to the President of the United States, "by and with the advice and consent of the Senate."

Section 10 provided that the Supreme Court of the United States should have jurisdiction "to review, revise, reverse, modify or affirm the final judgments and decrees of the Supreme Court of the Philippine Islands, in all actions, cases, causes, and proceedings \* \* \* in which the Constitution or any statute, treaty, title, right or privilege of the United States is involved, or in causes in which the value in controversy exceeds twenty-five thousand dollars." These cases can be brought up either by appeal or writ of error un-

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<sup>36</sup> Act 136, §§ 57, 58, 62.

<sup>37</sup> Act 136, Chapter V.

<sup>38</sup> Weigall v. Shuster, 11 Phil. Rep. 340; Barrameda v. Moir, 25 Phil. Rep. 44; McGirr v. Hamilton et al., decided March, 1915, R. G. No. 10,577.

der the same rules, regulations, and procedure as the final judgments and decrees of the Circuit Courts of the United States.

The Philippine Bill was the Organic Act for the Islands and therefore the system of Courts established under Act 136 is still in vogue.

Act 140 divided the archipelago into fifteen judicial districts with a judge for each district except the City of Manila, which had two judges. This was amended by Act 867, which increased the districts to sixteen and later by Act 2038, which made seventeen districts.

#### THE COURT OF LAND REGISTRATION

November 6, 1902, the Philippine Commission passed Act 496, which made provision for the registration of land titles. The system provided for is modeled after the Torrens System, the object of the Act being to remove useless obstructions to titles. A special court, known as the Court of Land Registration, was created with exclusive jurisdiction over all of these cases throughout the Islands. This court has five members and is a court of record with appeal from the decision of the court *in banc* to the Supreme Court under the same requirements as in an appeal from the Courts of First Instance. The remedy afforded is in the nature of a remedy "in rem"<sup>39</sup>; the title in fee simple is adjudicated against unknown as well as known claimants. This Act took effect January 1, 1903.

The jurisdiction of the courts as outlined above has not been changed, but the duties of the Court of Land Registration have been transferred to the Courts of First Instance and the number of judicial districts has been increased to twenty-six.<sup>40</sup>

The greater part of the substantive law established by the Spaniards has continued to be the law of the Islands. The greatest changes have been made in the adjective or mere mechanical provisions of the law. For example, under the Spanish regime, either party to an action might, at any stage of the proceedings, challenge the competency of the judge, on the ground of undue friendship or hostility to either party or his counsel. Upon the filing of the challenge, the question was referred to another judge and the original proceedings stopped until this side issue was determined. This privilege, however, did not cease at this point, but the competency of the judge sitting to determine the competency of the first judge might also be challenged and so on until all the judges and magis-

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<sup>39</sup> *Alba v. De la Cruz*, 17 Phil. Rep. 49; *Roxas y Chuidian v. Enriquez et al*, (13 Off. Gaz. 231, decided Dec. 24, 1914).

<sup>40</sup> Act 2347, passed by the Philippine Legislature, February 28, 1914. (This Act took effect July 1, 1914.)

trates had been challenged. The committee of the Commission reported that at the time of American occupation a number of criminal prosecutions were pending in the City of Manila in which every available judge had been challenged, the criminals, in effect, defying the authorities to bring them to trial.<sup>41</sup> This was remedied by an Act passed January 28, 1901,<sup>42</sup> which specified the grounds disqualifying a judge and which provided that if he were challenged he should decide the question himself and either retire from the trial or proceed, but that no appeal should be allowed from his decision in favor of his own competency until after final judgment.

The old Spanish procedure had many other features which were obnoxious to American theories of jurisprudence. Appeals from interlocutory orders were allowed; a judge could be sued for certain erroneous decisions; a person charged with a crime might be required to testify, and silence raised a presumption of guilt;<sup>43</sup> all criminal cases were reviewed by the *Audiencia*, whether appealed or not; and there were many others. The new Codes of Civil and Criminal Procedure did away with all of these features and established instead a direct and speedy system for the trial of causes. A case, once begun, is carried through to final judgment and all of the alleged errors of the lower court are decided in one appeal, rather than in three or four, as was the custom formerly. The guilt of a person charged with crime must be proved by the prosecution and there is no presumption in favor of guilt. Criminal cases in which the death penalty has been imposed are reviewed by the Supreme Court whether appealed by the defendant or not, due to the fact that there is no jury to assist the judge in finding the facts, but all other criminal cases must be appealed in due course.<sup>44</sup> This latter provision relieved the appellate court of a large volume of unnecessary business, and the reforms, taken as a whole, have established a wholesome respect for the law and the courts, which was sadly lacking before.

Act 190, the Code of Civil Procedure, provided that the official language of the courts should be Spanish until January 1, 1906, and English after that date. This provision was amended December 22, 1905, (Act 1427) extending the time to January 1, 1911, and

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<sup>41</sup> Report of the Philippine Commission (1901), Vol. I, p. 76.

<sup>42</sup> Act 81.

<sup>43</sup> U. S. v. Navarro et al., 3 Phil. Rep. 143, 148.

<sup>44</sup> The prosecution, in Spanish times, could appeal from an acquittal and this proceeding was followed under American administration until the case of U. S. v. Kepner, 1 Phil. Rep. 397, which was reversed on appeal to the Supreme Court of the United States, by a divided court—four justices dissenting—on the ground that it was double jeopardy. *Kepner v. U. S.*, 195 U. S. 100.

this period was still further extended by an Act passed May 20, 1909, (Act 1946) to January 1, 1913. On this latter date English became the official language of the courts. February 11, 1913, the Philippine Legislature passed an Act (Act 2239) confirming English as the official language, but providing that until January 1, 1920, Spanish should also be an official language. This Act was made retroactive to take effect as of January 1, 1913.

License to practice as an attorney at law in the courts of the Islands is granted by the Supreme Court. An attorney who has been admitted to practice in the Supreme Court of the United States, the Federal Courts, or the highest court of any state or territory, is required to pass an examination on the Civil, Penal, and Commercial Codes. All other applicants are required to pass examinations covering general law subjects, as well as the codes above mentioned.

The courts as they exist today have passed beyond the experimental stage and the results attained fully justify the wisdom of the men who planned and established them. From the beginning, Filipino lawyers of high reputation have shared in the development and they deserve great praise for the present success. The Chief Justice and two of the six Associate Justices of the Supreme Court; twenty-two of the thirty-six judges of the Courts of First Instance; the Secretary of Finance and Justice; the Attorney-General and nine of his thirteen assistants; and three of the five members of the Code Committee<sup>45</sup> are Filipinos.

The best summary of the results attained by the new courts is found in a statement by Commissioner Henry C. Ide, in his report to the Commission, dated November 6, 1903:

"Justice is administered evenly, uniformly, honestly, expeditiously, and ably, throughout the Islands."

The American government has, by establishing a just and stable system of courts, hastened the day for Filipino Independence.

DAVID CECIL JOHNSON.

*Manila, P. I.*

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<sup>45</sup> Act 1941, passed May 20, 1909, created a Code Committee, to revise and amend the Civil, Commercial, Penal and Procedural Codes of the Islands and to prepare new codes on these subjects. This work has not been completed.